

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JENNIFER D. LIGHT,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 2:14-CV-00360-MKD

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 16, 22

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 16, 22. The parties consented to proceed before a magistrate judge. ECF No. 26. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court grants Plaintiff's motion (ECF No. 16) and denies Defendant's motion (ECF No. 22).

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an

ALJ's decision on account of an error that is harmless." *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's decision generally bears the burden of establishing that it was harmed. *Shineski v. Sanders*, 556 U.S. 396, 409-410 (2009).

SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a multi-step sequential evaluation process for determining whether a person's disability has ended. 20 C.F.R. § 416.994(b)(5). This multi-step continuing disability review process is similar to the five-step sequential evaluation process used to evaluate initial claims, with additional attention as to whether there has been medical improvement. *Compare* 20 C.F.R. § 416.920 *with* § 416.994(b)(5). A claimant is disabled only if his impairment is "of such severity that he is not only unable to do his previous work[,] but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. § 1382c(a)(3)(B).

Determination of whether a person's eligibility has ended for disability benefits involves an eight-step process. 20 C.F.R. § 416.994(b)(5)(i)-(vii). The first step addresses whether the claimant is engaging in substantial gainful activity. 20 C.F.R. § 404.1594(f)(1). If not, step two determines whether the claimant has

1 an impairment or combination of impairments that meet or equal the severity of
2 listed impairments set forth at 20 C.F.R. pt. 404, subpt. P, app. 1. 20 C.F.R. §§
3 416.920(d), 416.994(b)(5)(i). If the impairment does not equal a listed
4 impairment, the third step addresses whether there has been medical improvement
5 in the claimant's condition. 20 C.F.R. § 416.994(b)(5)(ii). Medical improvement
6 is "any decrease in the medical severity" of the impairment that was present at the
7 time the individual was disabled or continued to be disabled. 20 C.F.R. §
8 416.994(b)(1)(i). If there has been medical improvement, at step four, a
9 determination is made whether such improvement is related to the claimant's
10 ability to perform work—that is, whether there has been an increase in the
11 individual's residual functional capacity. 20 C.F.R. § 416.994(b)(iii). If the
12 answer to step four is yes, the Commissioner skips to step six and inquires whether
13 all of the claimant's current impairments in combination are severe.

14 If there has been no medical improvement or medical improvement is not
15 related to the claimant's ability to work, the evaluation proceeds to step five. At
16 step five, consideration is given to whether the case meets any of the special
17 exceptions to medical improvement for determining that disability has ceased. 20
18 C.F.R. § 416.994(b)(5)(iv). At step six, if medical improvement is shown to be
19 related to the claimant's ability to work, a determination will be made to assess
20 whether the claimant's current impairments in combination are severe—that is,

1 whether they impose more than a minimal limitation on his physical or mental
2 ability to perform basic work activities. 20 C.F.R. § 416.994(b)(5)(v). If the
3 answer to that inquiry is yes, at step seven the ALJ must determine whether the
4 claimant can perform past relevant work. 20 C.F.R. § 416.994(b)(5)(vi),
5 416.920(e); SSR 82-61, available at 1982 WL 31387.

6 Finally, at step eight, if the claimant cannot perform past relevant work, a
7 limited burden of production shifts to the Commissioner to prove there is
8 alternative work in the national economy that the claimant can perform given his
9 age, education, work experience, and residual functional capacity. 20 C.F.R. §
10 416.994(b)(5)(vii). If the claimant cannot perform a significant number of other
11 jobs, he remains disabled despite medical improvement; if, however, he can
12 perform a significant number of other jobs, disability ceases. *Id.*

13 Prior to the final step, the burden to prove disability and continuing
14 entitlement to disability benefits is on the claimant. 20 C.F.R. § 416.994; *cf.*
15 *Bowen v. Yuckert*, 482 U.S. 137, 146 n. 5 (1987). The Commissioner must
16 consider all evidence without regard to prior findings and there must be substantial
17 evidence that medical improvement has occurred. 42 U.S.C. §§ 423(f)(1),
18 1382c(a)(4). The Commissioner views the evidence in a continuing disability
19 review from a neutral perspective, without any initial inference as to the existence
20

1 of disability being drawn from a prior finding of disability. 42 U.S.C. §§ 423(f)(1),
2 1382c(a)(4).

3 If the analysis proceeds to step eight, the burden shifts to the Commissioner
4 to establish that (1) the claimant is capable of performing other work; and (2) such
5 work “exists in significant numbers in the national economy.” *Cf. Bowen v.*
6 *Yuckert*, 482 U.S. at 146 n. 5; and *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.
7 2012) (applying the same burden at the initial disability determination).

8 **ALJ’S FINDINGS**

9 Plaintiff applied for supplemental security income benefits on August 23,
10 2004, and alleged a disability onset date (as amended) also of August 23, 2004. Tr.
11 1055-56. The application was denied initially, Tr. 32-35, and on reconsideration,
12 Tr. 29-30. Plaintiff appeared at a hearing before an Administrative Law Judge
13 (ALJ) on March 28, 2012.¹ Tr. 1085-1132. On May 9, 2012, the ALJ partially
14 denied Plaintiff’s claim. Tr. 372-91.

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16
17 ¹ Prior hearings were held on September 22, 2006, and August 7, 2009. Tr. 327-
18 53, 1055-84. The subject of this appeal is the ALJ’s decision following the third
19 hearing. *See* Tr. 372, n. 1 (current ALJ’s recitation of the case’s procedural
20 history).

1 At step one, the ALJ found that Plaintiff has not engaged in substantial
2 gainful activity since the alleged onset date, August 23, 2004. Tr. 375. At step
3 two, the ALJ found that from August 23, 2004, through April 22, 2010, the period
4 Plaintiff was disabled, and continuing to the date of the decision, Plaintiff suffered
5 from the following severe impairments: depression; anxiety; personality disorder;
6 asthma; obesity; and hypothyroidism. Tr. 375. At this step, the ALJ also found
7 that Plaintiff does not have an impairment or combination of impairments that
8 meets or medically equals a listed impairment. Tr. 376.² At step three, the ALJ
9 found that medical improvement occurred as of April 23, 2010. Tr. 385. The ALJ
10 found that the medical improvement is related to the ability to work because it
11 resulted in an increase in Plaintiff's mental residual functional capacity. Tr. 387,
12 389. The ALJ found that as of April 23, 2010, Plaintiff continued to have severe
13 impairments. Tr. 375. The ALJ concluded that Plaintiff had the RFC to perform a
14 range of light work, with additional limitations, beginning April 23, 2010. Tr. 387.

15 The ALJ found that, as of April 23, 2010, Plaintiff was unable to perform
16 _____

17 ² The ALJ found that Plaintiff was disabled from August 23, 2004 to April 22,
18 2010, because there were no jobs that existed in significant numbers in the national
19 economy that Plaintiff could have performed, given her assessed RFC for that
20 period. Tr. 383-84.

1 her past relevant work. Tr. 389. At the last step, the ALJ found that as of April 23,
2 2010, considering Plaintiff's age, education, work experience, and RFC, there were
3 jobs that existed in significant numbers in the national economy that Plaintiff could
4 perform, such as hand packager and table worker. Tr. 390. On that basis, the ALJ
5 concluded that Plaintiff's disability, as defined in the Social Security Act, ended as
6 of April 23, 2010. Tr. 390.

7 On September 18, 2014, the Appeals Council denied review, Tr. 354-56,
8 making the ALJ's decision the Commissioner's final decision for purposes of
9 judicial review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

10 ISSUES

11 Plaintiff seeks judicial review of the Commissioner's final decision denying
12 her supplemental security income benefits under Title XVI of the Social Security
13 Act beginning April 23, 2010. ECF No. 16. Plaintiff raises the following issues
14 for this Court's review:

- 15 1. Whether the ALJ properly weighed the medical opinion evidence; and
- 16 2. Whether the ALJ properly determined that medical improvement
17 occurred on April 23, 2010.

18 ECF No. 16 at 8-14.

DISCUSSION

A. Medical Opinion Evidence

Plaintiff faults the ALJ's for improperly considering the medical opinions of examining psychologists W. Scott Mabey, Ph.D., and John Arnold, Ph.D.; and reviewing psychologist Donna Veraldi, Ph.D. ECF No. 16 at 9-13.

There are three types of physicians: "(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant's file (nonexamining or reviewing physicians)."

Holohan v. Massanari, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted).

"Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." *Id.* "In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists." *Id.* (citations omitted). If a treating or examining physician's opinion is uncontradicted, an ALJ may reject it only by offering "clear and convincing reasons that are supported by substantial evidence." *Bayliss v.*

Barnhart, 427 F. 3d 1211, 1216 (9th Cir. 2005). "However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion

1 is brief, conclusory and inadequately supported by clinical findings.” *Bray v.*
2 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (internal
3 quotation marks and brackets omitted). “If a treating or examining doctor’s
4 opinion is contradicted by another doctor’s opinion, an ALJ may only reject it by
5 providing specific and legitimate reasons that are supported by substantial
6 evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81 F.3d 821, 830-31
7 (9th Cir. 1995)).

8 *Donna Veraldi, Ph.D.*

9 Plaintiff contends that the ALJ “discusses the mild to moderate, and
10 moderate limitations assessed by Dr. Arnold, but does not discuss how the
11 vocational expert testified that the individual would not be able to work with the
12 moderate limitations outlined by Dr. Mabee and Dr. Arnold.” ECF No. 16 at 13
13 (citing the vocational expert’s testimony at Tr. 1127-28).

14 The parties misread the record. At the hearing, Plaintiff’s counsel asked the
15 vocational expert to consider a hypothetical claimant with the physical limitations
16 that were incorporated into the ALJ’s RFC and the following limitations:

17 the individual would have moderate limitations in: (1) the ability to
18 understand and remember detailed instructions, carry out detailed
19 instructions; (2) maintain attention and concentration for extended periods;
20 (3) perform activities within a schedule, maintain regular attendance and be
punctual within customary tolerances; (4) complete a normal work day and
work week without interruptions from psychologically based symptoms and
perform at a consistent pace without an unreasonable number and length of

1 rest periods; (5) accept instructions and respond appropriately to criticism
2 from supervisors; and (6) set realistic goals and make plans independently of
others.

3 Tr. 1126-27.

4 Psychologist Dr. Veraldi testified and opined, not Dr. Arnold or Dr. Mabee,
5 that Plaintiff suffers the limitations described above. Tr. 1108. *Compare* Tr. 1108
6 (Dr. Veraldi's testimony); *with* Tr. 1127-28 (the vocational expert's hypothetical);
7 *see also* Tr. 831-33 (example of form to which Dr. Veraldi's referred). Dr. Veraldi
8 further opined that Plaintiff's limitations in social functioning were mild to
9 moderate, and likely increased to moderate when Plaintiff was under "higher
10 stress."

11 Significantly, when asked if a person with the physical limitations set forth
12 in the ALJ's RFC and the additional six limitations opined by Dr. Veraldi could
13 perform past work or other work, the vocational expert responded that he
14 "wouldn't expect someone with that kind of hypothetical set of limitations to be
15 able to maintain employment for any period of time." Tr. 1128.

16 The ALJ was not required to give greater credit to the limitations assessed
17 by the reviewing psychologist than the examining sources. The opinion of an
18 examining physician is entitled to greater weight than the opinion of a
19 nonexamining physician. *See Lester*, 81 F.3d at 830. The opinion of a
20 nonexamining physician cannot by itself constitute substantial evidence that

1 justifies the rejection of the opinion of either an examining or a treating physician.

2 *Id.* (citation omitted). Here, however, the ALJ appeared to give Dr. Veraldi's
3 opinion greater weight. Specifically, the ALJ stated:

4 The undersigned finds that Dr. Veraldi's opinion is supported by the
5 evidence as a whole, taking into consideration the multitude of varying
assessments of the claimant's social functioning abilities.

6 Tr. 378.

7 The ALJ did not explicitly reject Dr. Veraldi's assessed limitations, and
8 appeared to adopt them. Here, the RFC did not include all of Dr. Veraldi's
9 assessed limitations. When all of these limitations were included in a hypothetical,
10 the vocational expert testified that a person with these assessed limitations would
11 not be expected "to be able to maintain employment for any period of time," Tr.
12 1128, in other words, this person would be disabled. Because the ALJ purported to
13 adopt Dr. Veraldi's opinion, but failed to adopt (or give reasons for rejecting) her
14 assessed limitations, the ALJ erred.

15 Due to the Court's finding as to this issue, the Court concludes that it is
16 unnecessary to address the remaining medical opinions or other issues raised by
17 Plaintiff.

18 **B. Remedy**

19 As indicated, the ALJ erred when she purported to adopt Dr. Veraldi's
20 opinion but failed to incorporate several of her assessed limitations – limitations

1 that the vocational expert testified would render a claimant disabled.

2 Remand for further administrative proceedings is appropriate if
3 enhancement of the record would be useful. *Harman v. Apfel*, 211 F.3d 1172,
4 1174, 1178 (9th Cir. 2000). Conversely, where the record has been developed
5 fully and further administrative proceedings would serve no useful purpose, the
6 district court should remand for an immediate award of benefits. *Benecke v.*
7 *Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004) (citations omitted).

8 More specifically, the district court should credit evidence that was rejected
9 during the administrative process and remand for an immediate award of benefits if
10 (1) the ALJ failed to provide legally sufficient reasons for rejecting the evidence;
11 (2) there are no outstanding issues that must be resolved before a determination of
12 disability can be made; and (3) it is clear from the record that the ALJ would be
13 required to find the claimant disabled were such evidence credited. *Benecke*, 379
14 F.3d at 593; *see also Reddick v. Chater*, 157 F.3d 715, 728 (9th Cir. 1998); *Lester*,
15 81 F.3d at 834.

16 Here, the ALJ failed to provide any reasons for rejecting the limitations
17 assessed by the testifying expert, although the ALJ purported to credit the opinion,
18 satisfying the first prong of the test. There have been three hearings in this matter,
19 and there are no outstanding issues that must be resolved before a disability
20 determination can be made, satisfying the second prong. Finally, it is clear from

1 the record that if Dr. Veraldi's improperly discounted or unaddressed evidence is
2 credited, the ALJ would be required to find Plaintiff disabled.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, this Court concludes the
5 ALJ's decision is not supported by substantial evidence and contains harmful legal
6 error. Moreover, for the reasons discussed herein, the case is **REVERSED AND**
7 **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) **FOR AN**
8 **IMMEDIATE AWARD OF BENEFITS.**

9 **IT IS ORDERED:**

10 1. Plaintiff's motion for summary judgment, **ECF No. 16**, is **GRANTED.**

11 The matter is REVERSED and REMANDED FOR AN IMMEDIATE
12 AWARD OF BENEFITS.

13 2. Defendant's motion for summary judgment, **ECF No. 22**, is **DENIED.**

14 The District Court Executive is directed to file this Order, provide copies to
15 counsel, enter judgment in favor of Plaintiff and **CLOSE** the file.

16 DATED this 23rd day of September, 2016.

17 S/Mary K. Dimke

18 MARY K. DIMKE

19 UNITED STATES MAGISTRATE JUDGE